

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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UNITED STATES, et al., : Civil Action No.:
: 1:23-cv-108
Plaintiffs, :
versus : Friday, February 23, 2024
: Alexandria, Virginia
GOOGLE LLC, :
: Pages 1-26
Defendant. :
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The above-entitled status hearing was heard before
the Honorable Leonie M. Brinkema, United States District
Judge. This proceeding commenced at 10:17 a.m.

A P P E A R A N C E S:

FOR THE PLAINTIFFS: GERARD MENE, ESQUIRE
OFFICE OF THE UNITED STATES ATTORNEY
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3700

JULIA TARVER WOOD, ESQUIRE
AARON TEITELBAUM, ESQUIRE
UNITED STATES DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
450 Fifth Street, NW
Washington, D.C. 20530
(202) 894-4266

TYLER HENRY, ESQUIRE
OFFICE OF THE ATTORNEY GENERAL
OFFICE OF THE SOLICITOR GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7704

A P P E A R A N C E S:

FOR THE DEFENDANT: KAREN DUNN, ESQUIRE
WILLIAM ISAACSON, ESQUIRE
JEANNIE RHEE, ESQUIRE
BRYON BECKER, ESQUIRE
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, NW
Washington, D.C. 20006
(202) 223-7300

CRAIG REILLY, ESQUIRE
LAW OFFICE OF CRAIG C. REILLY
209 Madison Street
Suite 501
Alexandria, Virginia 22314
(703) 549-5354

COURT REPORTER: STEPHANIE M. AUSTIN, RPR, CRR
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, Virginia 22314
(571) 298-1649
S.AustinReporting@gmail.com

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

THE DEPUTY CLERK: The Court calls civil case United States of America, et al. versus Google LLC, Case Number 2023-cv-108.

May I have appearances, please, first for the plaintiff.

MR. MENE: Good morning, Your Honor. Gerard Mene with the U.S. Attorney's Office.

THE COURT: Good morning.

MS. TARVER WOOD: Good morning, Your Honor. Julia Tarver Wood for the United States of America.

THE COURT: Good morning.

MR. TEITELBAUM: Good morning, Your Honor. Aaron Teitelbaum for the United States.

THE COURT: Good morning, Mr. Teitelbaum.

MR. HENRY: Good morning, Your Honor. Tyler Henry on behalf of the plaintiff states.

THE COURT: All right. For the defense.

MS. DUNN: Good morning, Your Honor. Karen Dunn on behalf of Google.

MR. ISAACSON: Bill Isaacson, Your Honor, on behalf of Google.

THE COURT: Okay.

MS. RHEE: Good morning, Your Honor. Jeannie Rhee on behalf of Google.

1 THE COURT: Good morning.

2 MR. BECKER: Good morning, Your Honor.

3 Bryon Becker on behalf of Google.

4 THE COURT: All right. And, Mr. Reilly, you made
5 it.

6 MR. REILLY: I did. Thank you, Your Honor.

7 Craig Reilly here on behalf of Google as well.
8 Thank you.

9 THE COURT: All right. Well, this is a status
10 hearing, and I'm frankly a little disappointed that I didn't
11 get a better agreement among you all on what are basically,
12 you know, housekeeping matters. That does not bode well for
13 this case going forward, and I hope in the future when I ask
14 for you all to work something out, that there's a better
15 working out then what was done in this case.

16 A couple of important things that we need to get
17 resolved right off the bat. I recognize that the setting of
18 the trial date for September 9th has created a problem for
19 Google, but I don't find that to be an insurmountable
20 problem. There are enough lawyers, both -- just sitting in
21 the courtroom today, there are four counsel who identified
22 themselves, besides Mr. Reilly, as representing Google, and
23 a huge law firm as well behind them. And, quite frankly,
24 that September 9th date is not going to change. And I'm
25 sorry if it's creating some inconvenience for defense

1 counsel, but there are enough lawyers who can adequately
2 represent Google.

3 My concern is, there are several other major cases
4 that are on the various dockets within this courthouse that
5 I have to take into consideration. Quite frankly, had there
6 not been the delay in the discovery, some of which was as a
7 result of Google not being able to turn everything over as
8 directed, it pushed this case further down the road.

9 The July date, which the government wanted, did
10 not work on the Court's calendar for multiple reasons, not
11 the least of which is I want a jury that can hear this case,
12 and the summertime is a terribly difficult time to get
13 people to commit to six or seven weeks of trial. So, that
14 being the case, I am not changing the decision that the
15 trial will start on Monday, September 9. And that's several
16 months down the road.

17 So, number one, the Delaware case may or may not
18 get changed. I certainly don't like to interfere with
19 another judge's docket, but it certainly gives Google and
20 counsel enough time to rearrange -- and I don't mind
21 attorneys coming and going. So if counsel want -- Ms. Dunn,
22 if you want to, you know, start this case, and if you have
23 to leave for a week, just arrange with one of your
24 colleagues that he or she would be handling the case while
25 you're not here. Or you can split how you handle the case

1 in Delaware. But we are going to keep that trial date. All
2 right.

3 So, having said that, just let me tell you quickly
4 how the trial will be conducted. I'm going to seat ten
5 jurors because of the fact that the case is going to take a
6 while and we could lose a juror or two along the way. As
7 you know under the federal rules, you only need six jurors
8 to reach a decision in a civil case. So we have plenty of
9 extra jurors. So ten will be the number. Under the rules,
10 each side gets three peremptories, and so that's how we
11 work.

12 I want to make sure that if you are not familiar
13 with how we do backstriking in this court, you better make
14 sure you know how to do it, because that's one of the ways
15 we keep the case moving quickly.

16 The case will start -- the trial will start at
17 10:00 on Monday, September 9. I run my trials until
18 approximately 6:00 in the evening. We give the jury a
19 one-hour lunch break, it's almost always at 1:00. Sometimes
20 it shifts a little bit depending upon other things that are
21 going on. And I give a mid and -- a morning and a
22 mid-afternoon break of about 15 to 20 minutes, and that's
23 the normal schedule.

24 Day 2 and thereafter we will start at 9:30 and go
25 to 6:00. And, again, 6:00 -- sometimes we end a little bit

1 early for the jury but not necessarily for counsel. Because
2 at the end of each trial day, I will be having my courtroom
3 deputy read into the record, so there are no disputes, what
4 exhibits have been entered into evidence. So there are
5 sometimes some administrative mop-up that occurs after the
6 trial day.

7 The trial will be conducted in this courtroom. We
8 will make preliminary arrangements for an overflow courtroom
9 if, in fact, we need one so that there will be an in-house
10 broadcast to another courtroom -- I haven't decided which
11 courtroom that will be yet -- so that we can accommodate any
12 overflow. And I will be monitoring the situation in terms
13 of media interest, and we want to make sure that the
14 public -- the general public will have access to the trial
15 as well.

16 I'm hoping we don't just have a courtroom full of
17 lawyers. I don't know how many counsel are going to come
18 and try to watch this case. And it may get to the point
19 where I'll actually reserve part of the courtroom just for
20 the public, for non-lawyers. The lawyers can go and watch
21 from the overflow. That will take some time, and we'll
22 figure out how we do that.

23 I do want any proposed voir dire questions to be
24 filed no later than one week before the start of trial.
25 Again, I prefer if you can set a -- submit a joint set of

1 proposed voir dire. I don't necessarily give it, and don't
2 ask for contentions, because I don't give contention
3 questions. And then if there are individual questions that
4 you all couldn't agree upon, I'll certainly look at those.
5 Ultimately, you know, I do the voir dire. There's no
6 attorney voir dire in this courthouse.

7 Have you talked between and among yourselves about
8 the possibility of any kind of a juror tutorial about this
9 case? Has anyone thought about that?

10 MS. TARVER WOOD: Your Honor, we've not discussed
11 that, but the United States has certainly considered that
12 question, and, in that regard, also considered whether, for
13 example, jurors would be able to pass notes during the trial
14 indicating questions about things they might not be
15 following.

16 THE COURT: Yeah. Let me hear from you, Ms. Dunn.

17 MS. DUNN: Your Honor, we would be happy to
18 discuss with the United States that possibility. Another
19 thought that we've had is maybe a glossary for the jurors.
20 And we're happy to discuss that as well with the United
21 States.

22 THE COURT: All right. Now, I will tell you, I,
23 number one, would strongly favor a glossary; and,
24 number two, I have an open mind about a tutorial; however,
25 I'm not going to spend one second of my time working it out

1 between you all. In other words, if you can't agree to what
2 you want to present, then it's not going to happen. All
3 right. Don't come to me with two different versions of the
4 tutorial. I'm not going to spend my time on that.

5 And obviously that's going to be a huge advantage
6 to both sides, because I'm setting a half hour limit on
7 opening statements. So to the extent you have a tutorial,
8 that's a general education of the jury, and you don't have
9 to spend time in your opening statements going through that.
10 All right.

11 The glossary is a great idea, and we would give
12 the glossary to each juror, which I think would help them
13 tremendously, and would help both sides in presenting a good
14 case.

15 The question about whether to let the jurors ask
16 questions is an interesting one. I've done it once. Quite
17 frankly, it didn't work that well, and it has a tendency to
18 slow things down dramatically. So I'm going to keep an
19 open mind about that issue. All right.

20 The jurors in this jurisdiction are pretty sharp,
21 and as long as the lawyers are doing a good job in
22 presenting things, especially with a tutorial, I would think
23 that's not going to be necessary. So I'll keep an open mind
24 about that issue. I do let jurors take notes, so they'll be
25 able to take notes during the trial.

1 Now, it's going to be very important that you make
2 sure that your tech people who are going to be presenting
3 the evidence, that they've worked carefully with
4 Mr. Bachman, our IT person or AV person, in terms of the
5 equipment we have here in the building.

6 The audio and visual presentation system does have
7 the capability of just showing exhibits to the witness and
8 the Court without the jury or the public seeing it, which
9 means that if you're moving a piece of evidence in, we can
10 look at it before it's actually shown. All right. So make
11 sure that your tech people are 100 percent comfortable with
12 how that is done so that we can move things along.

13 I do not want to have a lot of issues come up
14 during the trial about exhibits, and so I'm not sure -- I
15 understand in the bench trial that went on in D.C., that
16 there was some degree of issues with proprietary or
17 confidential information from third parties, and I want to
18 make sure, to the extent possible, that that kind of issue
19 is reduced in this case.

20 So to the extent -- and, at this point, you
21 should -- both sides should have some sense of what your
22 physical exhibits look like. The ones that you feel may
23 have sensitive third-party information, are they redactable
24 such that the document can be presented without having to go
25 through some complex sealing procedure? At this point, does

1 the government have any sense of that yet?

2 MS. TARVER WOOD: Your Honor, I think --

3 THE COURT: At the lectern.

4 MS. TARVER WOOD: -- it really does depend on the
5 documents and the third parties. I think different third
6 parties have taken different positions in that regard. And
7 that's part of why we wanted to include, in our proposed
8 schedule, time for the parties to -- attempt to resolve
9 those issues prior to trial so that trial can move
10 efficiently and there's no need to stop in the middle with
11 redactions and the like.

12 THE COURT: Well, we're not going to. I mean, I'm
13 definitely -- in the order that I get out to you sometime
14 early next week, we're going to have dates.

15 MS. TARVER WOOD: Excellent.

16 THE COURT: Much earlier dates than what you were
17 proposing, though.

18 MS. TARVER WOOD: Thank you, Your Honor.

19 THE COURT: I'm not going to be doing this one
20 week before trial.

21 MS. TARVER WOOD: Thank you, Your Honor.

22 THE COURT: All right. So there's not going to be
23 an issue about that.

24 But you're going to need to talk to these third
25 parties as well, because just the fact that the information

1 may be, you know, a little bit sensitive is not going to be
2 enough. It has to be genuinely of a proprietary nature.

3 MS. TARVER WOOD: Understood, Your Honor.

4 THE COURT: All right. Both sides should start
5 working on that as quickly as possible, because this is
6 going to be as open a trial as is possible, and I want to
7 make sure that that's not going to be an issue.

8 There's been a request by the government to do a
9 chess clock system. I'm not going to impose that. First of
10 all, to the extent the government is worried that they might
11 take 45 minutes to conduct a direct examination and the
12 defense might take two or three hours to cross, good trial
13 lawyers know that that's not a very effective way of
14 presenting a case. It turns jurors off. It shows, quite
15 frankly, anybody who's doing that type of cross is probably
16 defensive. It probably helps the plaintiff. And I think I
17 can police that kind of problem adequately. There are some
18 witnesses where that will happen and it makes sense, but I
19 don't think that's going to be a major problem.

20 So what I'm going to do in that respect, because I
21 want to keep the case moving, is I'm not going to set a time
22 limit in that respect. You will get time limits for opening
23 statement, and I'll decide how much time you get for closing
24 argument when I see where we are with the case and how it's
25 gone.

1 I'm going to certainly start by letting the
2 government put its case on. We'll see how it's going.
3 Almost every day I'll be asking you where are we in your
4 estimate of your time.

5 As I understand, the 105 hours that you wanted
6 comes to about three trial weeks.

7 MS. TARVER WOOD: Yes, Your Honor.

8 THE COURT: And that would give -- even if Google
9 took the same amount of time, that's six weeks. I'd be
10 shocked if this case, frankly the way we try cases, is going
11 to take that long, but I'm going to be having that sort of
12 in the back of my mind as I monitor how we're doing.

13 And so I am leaving open the possibility that if
14 the case really starts to bog down because there's just too
15 many administrative or whatever things are happening, I will
16 institute some sort of a chess clock system, but right now,
17 that's not the plan. All right. So hopefully we will not
18 need to do that.

19 Okay. In terms of how you think about presenting
20 this case, the types of things that I don't allow in my
21 court, unless it is actually a material issue, don't spend
22 time on the expert qualifications. Assuming your experts
23 have survived the *Daubert* hearings, they're experts, just
24 move them right in. You can move in the CV. I might let
25 you ask one or two questions about, you know, you've got a

1 Ph.D. in such-and-such, or you've been an expert in a number
2 of trials. But I don't want to hear where they went to high
3 school or college or what their major was or how many
4 publications they've got. All right. The jury can read
5 that. That saves, in many cases, a fair amount of time.
6 And that's my approach in trying cases. So if I find that
7 either side is asking what I think are unnecessary or
8 extraneous questions, I'm not shy about stopping that.

9 I'm also a little bit concerned about the
10 government's representation that there may be multiple
11 witnesses that have to be called on a particular issue. The
12 practice in this court is we don't allow for cumulative
13 evidence. So I may allow one or two witnesses. And that's
14 what rebuttal is about. If the defense comes in and says,
15 well, these are sui generis issues for this particular
16 witness and it doesn't permeate the market, then that opens
17 the door for rebuttal. All right. That's a more elegant
18 way of doing it. But, in any case, I just want you to
19 understand if you're bringing in the third or fourth witness
20 on basically the same issue, you're not going to be able to
21 do that in your case in chief. All right.

22 Now, I also am concerned about the government's
23 request to have someone who is not from the U.S. Attorney's
24 Office being part of the plaintiffs' trial team. The whole
25 point of requiring local counsel is an attorney who actually

1 knows how we operate. Mr. Mene's been around a long time.
2 I don't -- he may have other things he needs to do and
3 someone else from the U.S. Attorney's Office can certainly
4 step in. But you proceed at your own risk if you're not
5 having an attorney who really knows how we do things. I
6 mean, Mr. Reilly is here with Google, and he certainly knows
7 how this court operates. And I don't think the man whose
8 name you've requested become pro hac -- has he ever
9 practiced over here?

10 MR. TEITELBAUM: That's me, Your Honor.

11 THE COURT: Oh, I'm sorry.

12 MR. TEITELBAUM: And I have not other than this
13 case.

14 THE COURT: Then we're going to keep Mr. Mene just
15 as he is. He doesn't have to sit at counsel table as long
16 as he's in the courtroom available as a resource. But I'm
17 not going to grant that request. All right.

18 MS. TARVER WOOD: And, Your Honor, just to
19 clarify, would that also apply to someone else from
20 Mr. Mene's office, or need it be Mr. Mene specifically?

21 THE COURT: It needs to be an experienced
22 attorney. This is a complex case, and it needs to be a
23 lawyer who knows how we try cases. All right.

24 MS. TARVER WOOD: Understood, Your Honor.

25 THE COURT: Okay. Now, in terms of deadlines --

1 and I'm trying to find my chart here -- I'm going to just go
2 ahead and issue -- I'm looking at the various categories of
3 deadlines that you proposed, and I'm going to actually
4 change a significant number of them.

5 I liked the -- several of Google's later
6 deadlines, frankly, because the trial has been pushed. So
7 in terms of the filing of summary judgment motions and that
8 sort of thing, you're going to get those from me later today
9 or Monday. I'll give you a scheduling order.

10 The main thing I wanted you just to be aware of,
11 though, is that I am going to try, as I said earlier, to
12 push any third-party issues up much earlier so that we're
13 not doing them right on the eve of trial. I'm not going to
14 take up trial time to address any of those issues. So they
15 have to be worked out ahead of time.

16 Now, both sides have mentioned depositions. Are
17 there any witnesses either side is planning to call who will
18 not be live in court?

19 MS. TARVER WOOD: The United States has not made a
20 final decision, but we are considering very tightly edited
21 videotaped depositions. That's one thing we are
22 considering, but we haven't made a final decision.

23 THE COURT: They are highly ineffective in a case
24 that's complicated.

25 Is there a reason why those witnesses cannot be

1 called in person?

2 MS. TARVER WOOD: I think again, Your Honor, it
3 depends on the scheduling, but we will certainly take Your
4 Honor's advice in that regard into account.

5 THE COURT: All right. How about from Google?

6 MS. DUNN: Your Honor, there are people who may
7 not be within the subpoena range, and if they would come, we
8 would prefer that, obviously. And so with Your Honor's
9 guidance to the parties, maybe we'll be able to get people
10 here that we wouldn't otherwise be able to get. And we
11 understand the Court's words about deposition designations.

12 THE COURT: Well, both sides have to work
13 diligently on that. I think, again, it's to your benefit to
14 have the witnesses here live in court. The problem with
15 deposition testimony, number one, is you're at the mercy of
16 the tech system, and every now and then it goes down, and
17 we're not going to delay the trial.

18 Number two, I don't like it because I can't
19 control it. You know, the same way if this witness is live
20 in court and you're asking a question that I'm not going to
21 permit, I can immediately stop it. I don't have that
22 control over a deposition that's prerecorded.

23 And sometimes I have found also, depending upon
24 how the deposition was conducted, huge delays. The witness
25 is, you know, scratching his head, looking at notes,

1 consulting with counsel. And if that starts to happen --
2 I'm just alerting you, if you're planning to use deposition
3 testimony, if I find that the pace of the deposition is too
4 slow, then we switch to the old-fashioned method of my law
5 clerk sitting in the witness box reading the witness's
6 answers, and then whichever side was doing the questioning,
7 you know, reads the question. And that is really not
8 effective, but, I mean, that is the way we do it if I find
9 that the way in which the video is going is not going well.
10 All right. So, again, I really hope that both sides work
11 diligently to reduce the number of depositions that you have
12 to rely upon. Okay.

13 In terms of -- there was a request for an
14 extension of the page limit. I will give each side an
15 additional five pages for the motion for summary judgment.
16 I'm not going to extend anything beyond -- and the five
17 pages will apply to the opening motion, the objection and
18 the reply brief. All right. But not more than that. I
19 think you can get it down to that.

20 I think that covers just about everything. Is
21 there anything in your joint proposal that you were
22 particularly concerned about that you want me to address in
23 court?

24 MS. DUNN: Your Honor, may --

25 THE COURT: Yes, ma'am.

1 MS. DUNN: -- I just -- not about the joint
2 proposal but with the trial length.

3 THE COURT: Yes.

4 MS. DUNN: I would say our estimate of how long
5 this trial would take is something in the order of four
6 weeks, accounting for the fact that the Court does not want
7 cumulative evidence.

8 So I know that the Court has said you're thinking
9 at the outermost it could be six, but just because we --
10 Google did not put in a filing on trial length, and so I
11 want to make sure that we alert the Court that our estimate
12 is a lot closer to four weeks than it would be to six.

13 And I think the issue is, you know, there's a
14 certain number of experts, there's a certain number of
15 federal agency representatives that need to testify, but the
16 other witnesses are many, many, many third parties who
17 obviously are here to testify to facts, not opinion, and we
18 think that the more this goes on, the more cumulativeness we
19 will have. So I just wanted to make sure the Court knew
20 about our estimate as well and understood that, you know, we
21 can't predict the future, but that's what we're thinking at
22 this time.

23 THE COURT: Well, again, one of the concerns I
24 have -- and it may or may not become an issue -- we do run
25 into the Jewish holidays, all right, and I'm not insensitive

1 to that. Rosh Hashanah begins the evening of October 2nd.
2 So when I estimate about six weeks, we may or may not have
3 to take a break. I'm not sure how that's going to work with
4 the jury. Quite frankly, if there are enough attorneys for
5 whom that is not an issue, we can continue with the trial.
6 But obviously if we have a juror who is observant, that's
7 going to change things. I have to accommodate, obviously,
8 for that.

9 I doubt this case would still be going on, but
10 October 11th is the beginning of Yom Kippur, and, again,
11 that would be an early leave because the sun down by then is
12 probably around 6:00 or so. So I'm not, you know, unaware
13 of those two potential, you know, delays in the trial. And
14 then of course October 14 is a Federal holiday. And so
15 there are some possible delays coming from that.

16 But, in any case, I like four weeks. Again -- but
17 what I will do as an abundance of caution is I'm going to
18 get a jury that can sit for six --

19 MS. DUNN: Understood, Your Honor.

20 THE COURT: -- so we don't run into a problem.
21 All right.

22 MS. DUNN: I also don't want to push my luck, but
23 on the summary judgment briefing, we do plan to move on
24 several grounds where we believe the issues are ripe for
25 summary adjudication, and as Your Honor well knows, the

1 facts need to be recited within the brief itself. Obviously
2 there's an extensive record in this case. I do think if
3 Your Honor had any flexibility, we would accept any
4 additional pages, but I understand what Your Honor has said.
5 But there are very concrete legal bases upon which that we
6 plan to move, and we think they may narrow the trial,
7 obviously, if the Court sees them meritorious.

8 THE COURT: Well, again, if there were a joint
9 stipulation of facts that both sides completely agree about,
10 that reduces the number of pages you have to dedicate to
11 those facts that are still in contest, and that might be an
12 incentive to get you to work together a bit on that. All
13 right.

14 MS. DUNN: I am not optimistic on the summary
15 judgment facts on that score. Of course we will try. But
16 if Your Honor has any flexibility -- obviously if there's
17 not an agreement, you know, we would request leave maybe to
18 return to the Court, because the summary judgment legal
19 issues are -- there's, you know, controlling Supreme Court
20 precedent. We want to make sure we thoroughly brief the
21 legal issues here that are going to bear on trial length and
22 everything that comes after.

23 THE COURT: All right. I'll keep an open mind on
24 that issue.

25 MS. DUNN: Thank you, Your Honor.

1 THE COURT: All right. Are there any other
2 matters that you all want the Court to address? I think --
3 I'm sorry. Go ahead. Yes.

4 MS. TARVER WOOD: Nothing from the United States,
5 Your Honor.

6 THE COURT: Mr. Reilly.

7 MR. REILLY: Just to -- the Court's normal
8 practice is not to sit in a jury trial on Fridays, will that
9 be the case?

10 THE COURT: No. No. No. No. It's five days a
11 week.

12 MR. REILLY: Five days a week. Okay.

13 THE COURT: I've changed that.

14 The one thing I do do, though, because I will have
15 other matters going on when this trial is happening, so I
16 will probably be doing some criminal and other civil matters
17 in this courtroom probably at 8 or 8:30 in the morning. So
18 at the end of certain days, you may have to sort of clean
19 out. We will give you -- I will see whether we can get you
20 access to one of the witness rooms on this floor where you
21 can store your stuff overnight on those days when we have to
22 clean the courtroom; okay?

23 MR. REILLY: All right. And the other one, with
24 the deposition designations, does the Court have a time
25 limit that you prefer on that in addition to the other

1 limitations you described?

2 THE COURT: I'm going to put it in the final order
3 that I give you. I'm looking at this right now.

4 The two dates that I want you to go home with
5 tonight, though, so you can start planning accordingly, in
6 terms of the deadline for filing summary judgment and
7 *Daubert* motions, the government had proposed Friday,
8 April 12, and Google had proposed the 26th. I'm going to go
9 with Google's dates on those. All right.

10 MS. DUNN: Thank you, Your Honor.

11 THE COURT: So those deadlines will be April 26th.

12 The oppositions, I'm, again, going to go with
13 Google's dates, which are May 17, and the replies, May 31st.
14 All right. And, at this point, I like having oral argument
15 on June 14. So those you can go to the bank on.

16 What I am going to be changing so that you can
17 start preparing for this is that I think it shouldn't take
18 more than two weeks -- first of all, I may surprise you, and
19 I may rule from the bench depending upon how well things are
20 briefed. Certainly within two weeks, I'll be able to give
21 you enough ruling. So I don't see any reason why the
22 witness lists, pretrial exhibits, and depo designations
23 can't be filed by June 28. That's two weeks after we would
24 have had the oral argument on the motions.

25 And then if you're filing on June 28th your

1 witness lists, your pretrial exhibits and your deposition
2 designations, at that point, you should also know what
3 non-party confidential information you might be having to
4 use, because that would have been part of your exhibits. So
5 I'm making June 28th the same date by which you must start
6 to notify -- by which you must be notifying third parties as
7 to that.

8 And then any objections from third parties are
9 going to be -- I'm giving them just two weeks to respond.
10 Any third party who has not, within that 14 days, indicated
11 an objection, they've lost it. All right. And so you need
12 to make sure that they all know that. And so those dates I
13 can give you solid right now. I'm going to look at the rest
14 of this calendar and decide what I'm going to do with the
15 rest of what you've recommended.

16 MS. TARVER WOOD: Your Honor, may I ask a
17 clarification? You know, one substantial source for
18 heavily-redacted and highly-confidential documents are
19 Google's own documents. And so, in our proposal, that
20 request for sealing or confidentiality would apply to Google
21 or the United States if any of our documents are marked in
22 that fashion, and I don't think there will be many from us,
23 if any. But we would ask that Google do the same, and that
24 for any documents that Google intends to have the United
25 States or itself use in a sealed or non-public fashion, that

1 they meet those same deadlines.

2 THE COURT: Yes. That would be the case.

3 MS. DUNN: We understand, Your Honor.

4 The other thing I'd like to say is that Google
5 understands Your Honor's admonishment about transparency and
6 the importance of it, and so Google plans to be extremely
7 judicious in its designations.

8 THE COURT: All right. That's fine.

9 So I'm giving you those dates now, and then the
10 rest of what you had in your joint statement I'm going to
11 look at and make some fine-tuning to.

12 The only other thing I just want to alert you to
13 is, I don't want to have multiple motions in limine. I
14 think there will be one motion in limine hearing. So gather
15 them all together and we'll do them at one time. It may be
16 a long day, but I don't want to have, you know, seriatim
17 hearings in that respect. All right.

18 And I don't think I've mentioned this to you
19 before -- and don't laugh when I say it -- but in every
20 civil case that I have, I always throw out to the parties
21 whether there is any potential or interest in trying to see
22 whether the case can be worked out. And it may or may not
23 be something that anybody's interested in, but I've got to
24 tell you, it wouldn't be the first time that a very complex
25 case ultimately became settleable. I don't know because of

1 the other litigation whether that's refeasible or not, but
2 it's something that I just want both sides to at least be
3 thinking about.

4 Judge Anderson -- who certainly knows this case
5 well because he's been working with you, and he's still
6 here, he's on re-call in part because of this case -- would
7 certainly be a very experienced person who could work with
8 you if there were any interest in resolving this case. So
9 I'll just let you know that that's an option that's always
10 out there.

11 All right. Is there anything else we need to
12 address with this case right now?

13 MS. TARVER WOOD: Nothing from the United States,
14 Your Honor.

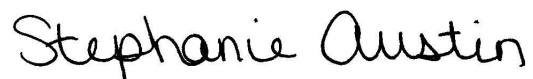
15 THE COURT: How about for the defense?

16 MS. DUNN: No, Your Honor. Thank you, Your Honor.

17 THE COURT: We'll recess court until 2:00.

18 (Proceedings adjourned at 10:46 a.m.)

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20 I certify that the foregoing is a true and accurate
21 transcription of my stenographic notes.

22 
23

24 Stephanie M. Austin, RPR, CRR
25